



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,416	03/11/2005	Hirofumi Haruna	Nisshin-1(FP2656US)	4791
7265 7590 04/09/2009 MICHAELSON & ASSOCIATES P.O. BOX 8489 RED BANK, NJ 07701-8489				
EXAMINER				
PADEEN, CAROLYN A				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
04/09/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/527,416

Applicant(s)

HARUNA ET AL.

Examiner

Carolyn A. Paden

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 19, 2009 has been entered.

Applicants' arguments concerning the prior art rejection over Berger in view of Ghosh and Babayan is persuasive. Accordingly this rejection has been dropped. Additional references have come to light in the updated search. Prosecution of this application continues as follows:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 5-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodor (4,396,639) in view of Wanders (GB 1,139,550) and as further evidenced by Young article and further in view of Berger.

Bodor discloses a fat blend for margarine. The abstract describes the fat blend as containing an interesterified mixture of oils liquid at refrigerator temperature and oils rich in lauric acid residues. Further oils liquid at refrigerated temperature, fats of a melting point of 20-35C and fats of a melting point of 40-45C may be present. In this case the fats of a melting point of 40-45C are taken to be fat c of claim 1. The oils of a melting point of 20-35C are disclosed at column 3, line 3 to include coconut oil. The interesterified fat is disclosed at the bottom of column 1 to include palm oil. The composition is described in the paragraph bridging columns 2 and 3 to include 40-70% interesterified fats, 20-50% fats melting at 20-35C, such as coconut oil, palm kernel oil and palm oil; and 5-20% fats melting at 40-45C. The claims appear to differ from Bodor in the selection of palm oil as the interesterified oil and coconut oil as fat a. Bodor refers to British Patent 1139550 as a known interesterified fat mixture that includes coconut oil and palm oil in example 1. Given the specific teaching of British Patent to interesterified combinations of palm oil and coconut oil, it would have been obvious to utilize this interesterified fat in Bodor. With regard to the C8 to C10 content required in part a of claim 1, Young is cited to show that coconut oil and palm kernel oil are known in the art to have this level of C8

to C10. With the teachings of Young and Bodor before him, it would have been obvious to one of ordinary skill in the art to prepare a fat composition for margarine with the specific fat components of the claims. It is appreciated that the source of fat c is not mentioned, but one of ordinary skill in the art would expect these fats to be one or more of the fats outlined in claim 5. It is also appreciated that water is not mentioned but water is known in the art to be a component of margarine and Berger is relied upon to support this assertion. Berger teaches at page 1 that margarine is known in the art to contain up to 16% water. It would have been obvious to expect a margarine formulation from Bodor fats to contain the moisture content of the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

Application/Control Number: 10/527,416
Art Unit: 1794

Page 6